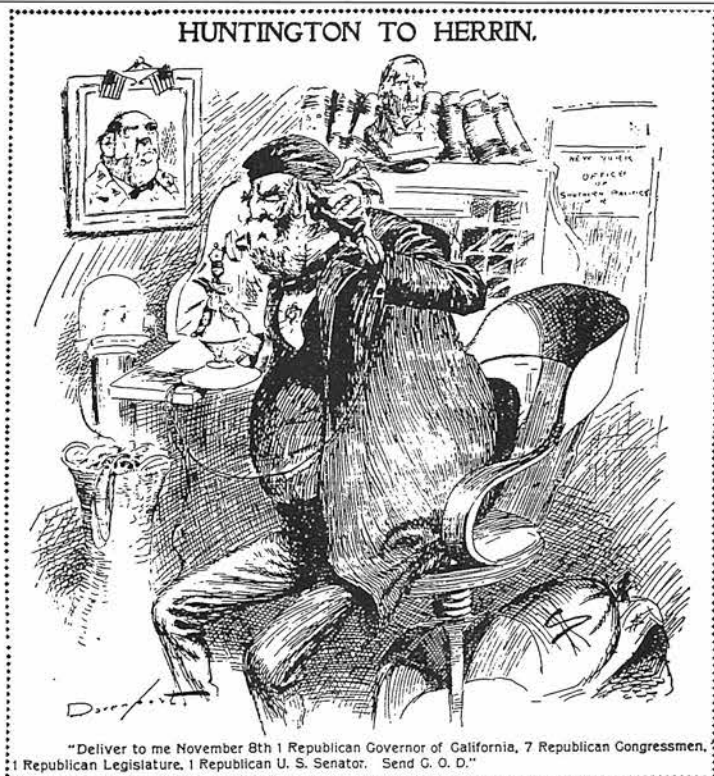




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Cartoon by Homer Davenport, San Francisco Examiner, 1898

Regulating the Octopus: Progressivism, the California Railroad Commission and Constitutionality

by Paul Spitzzeri
1999 Student Essay Winner

The last California general election featured a proposition concerning the deregulation of the electric utility industry. Recently there were reports of complaints from A.T. & T. about the monopolistic hold Pacific Bell

allegedly maintains on California's long-distance telephone market despite deregulation. These two recent examples demonstrate the importance of the relationship of

(Continued on page 3)

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THE MONTHLY ROUNDUP

DECEMBER 1999 MEETING

Andrew Rolle, professor emeritus Occidental College and noted author on California and the West, presented the Corral with a new interpretation of the immigrant experience.

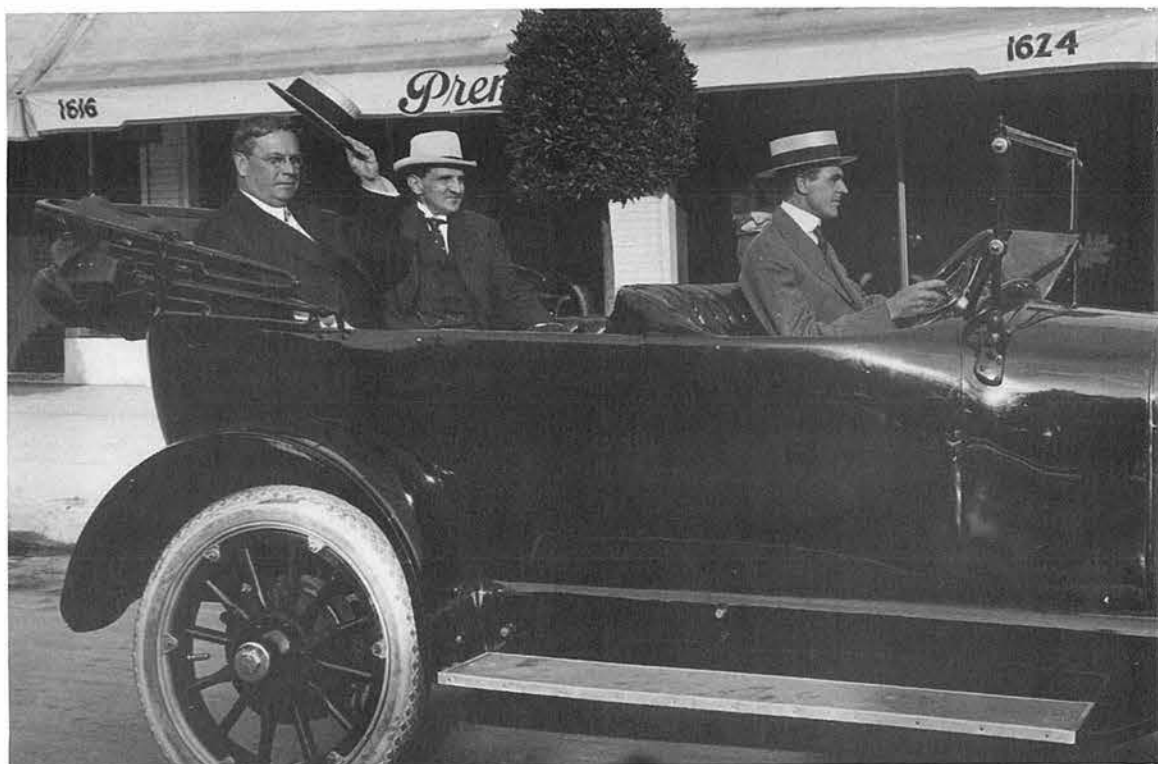


Photograph by Frank Q. Newton

December Meeting Speaker Andrew Rolle

Oscar Handlin in his famous volume, *The Uprooted*, found the immigrant experience in the urban east was one of despair, isolation and failure. Dr. Rolle, on the other hand, looking at the immigrant, especially the Italian, experience in the West found that it did not fit into this stereotype. Among these immigrants were many examples of success, achievement and integration.

On the West Coast, the Italians dominated the fishing industry, especially tuna fish.
(Continued on page 17)



Hiram Johnson in one of the cars he used to campaign to show his independence of the Southern Pacific. Courtesy of The Huntington Library

the California Public Utilities Commission to the highly complicated, yet crucial, utility industry. The power this commission wields originated in the California Railroad Commission (C.R.C), and the 1911 legislative session and election, which approved massive changes to the commission's regulation of railroads and utilities. Constitutional questions central to government regulation are operant here—namely, the concepts of substantive due process and taking of property. While California was often at the vanguard regarding utility regulation, the State Supreme Court was a bastion of conservatism in analyzing decisions of the railroad commission. Changing ideas of constitutional law, therefore, have affected how utility regulation has been viewed in California.

When progressives, led by Governor Hiram Johnson, engineered a program of reform amendments to the state constitution in 1911, one of the most important aspects was regulation of railroads and other utilities. The aftermath, however, of these dra-

matic political changes was not as dominated by antipathy to the railroad as was expected. Rather, it was the moderating role of the California Railroad Commission and, after November 1946, its successor, the California Public Utilities Commission in utility regulation that was most significant. First, the history of the 1911 amendments and the greatly empowered railroad commission must be examined.

When the 1878 Constitutional Convention considered railroad issues, there was considerable anti-Southern Pacific sentiment. As beneficial as the industry was for California, its citizens were greatly concerned with the benefits accruing to the Big Four. Railroad subsidies, exorbitant rates and fares, huge landholding and the absence of competition made the Southern Pacific the focus of corruption, especially in the uncertain economic scene of the mid to late 1870s.

Perhaps the earliest trumpet blast and jeremiad against the power of the Southern Pacific was fired by Henry George in his sem-

inal article, "What the Railroad Will Bring," published in 1868. Acknowledging that "the new era will be one of great material prosperity," George warned, however, "we cannot hope to escape the great law of compensation which exacts some loss for every gain." He was concerned about the fact "that the completion of the railroad and the consequent great increase of business and population will not be a benefit to all of us, but only to a portion." A precursor to his famous *Progress and Poverty*, George outlined his thesis that wealthy capitalists would only get richer, while the poor and laboring classes could not expect significant improvements and returns. The article was important in the developments that led within a few years to a massive movement against the Big Four.

While George emphasized class differences and the intangibles of character, Governor Henry Haight in an 1870 critique took to constitutional concerns. Even without court decisions about authorization of bond donations to railroad corporations and the levying of taxes for their payment, Haight argued, "that any legislation authorizing donations by counties or cities to railway corporations is unconstitutional and void." Haight's concern was the constitutional right of taxation and eminent domain's "unlawful confiscation of property," and he argued that "an almost morbid desire to facilitate railway communication with the Atlantic States . . . doubtless influenced the Court to adopt rules of construction whose unsoundness is becoming every day more apparent." The 1849 California Constitution, he claimed, had "more careful restrictions upon the power of taxation than those of all other states in the Union." Analyzing several decisions of the State Supreme Court, moreover, Haight concluded that the taking of property through unfair taxation was a demonstration that "no logic will convince a man that the Legislature can take his property without his consent and without payment, and give it to the stockholders in a private corporation, or compel him, against his will, to subscribe to its stock." Arguments to the contrary are simply

"in conflict with sound rules of [state] constitutional interpretation."

The development of the anti-railroad movement of the 1870s, however, was less grounded on constitutionality as expounded by Haight and more on the classism of George and the agitations of merchants and shippers who desired lower shipping rates. This led however, to constitutional change and California became the first state to so approach the thorny problem of how to regulate the all-powerful railroad. Legislative action led to, in 1876, the formation, under the O'Connor Act, of a three-person board "to investigate conditions and to gather pertinent information concerning strict future regulations." According to Gerald Nash, however, their research so agitated the Southern Pacific that, after two years, the Legislature abolished the board and replaced it with an equally ineffective Transportation Commissioner.

While the 1878 elections included many from the Workingmen party, a loosely-confederated group of anti-railroad, anti-Chinese and pro-worker activists, there were some Republicans and Democrats who also agitated, privately, if not publicly, for some controls on the railroad. Again, the depressed economy after 1875 brought about resentment toward a seemingly unaffected Southern Pacific. When a convention was called to draft a new state constitution in 1878, the Workingmen and other disenchanted delegates responded to the anti-railroad feeling by creating, by constitutional amendment, a three-person Railroad Commission. The powers of the Commission were wide-ranging, but most important was the authority to fix maximum rates that were considered reasonable, with the important proviso that these rulings were not subject to State Supreme Court review. This was in response to the ineffectiveness of the other commissions, whose decisions were open to judicial review and the fear that such a system in California would lead to control of the courts by the Big Four. A rather high salary to the commissioners was also seen as an incentive

for independence.

There was no doubt that the history of this commission to 1911 was an unqualified failure. The disagreement is over why. Ward McAfee argues that it was because most of the commissioners in those 30-plus years were nothing more than lackeys or, at best, strong sympathizers of the Southern Pacific. McAfee's argument was that the creation of the Commission actually forced the Big Four to dive more deeply into the political pool than before. First, control of the Commission was rather easily established in his view by the Southern Pacific controlling two commissioners, rather than many judges and legislative representatives. Second, its view of what constituted just and reasonable rates was couched instead in terms of *prima facie* discrimination hence "the judicial character with which the organic law has invested our office, has enabled us to exercise a judicious distinction, however, between 'just and unjust' discriminations." When, for example, the Southern Pacific developed a special contract system which provided rate rebates for shippers who would sign exclusive contracts with the company, this was held as reasonable by the commission, though the system was abolished soon after by the U. S. Supreme Court. Another 1886 U.S. Supreme Court decision prevented states from applying rate reforms by "a taking of private property for public use without just compensation."

A key national Supreme Court decision along these lines was *Munn v. Illinois*, which upheld a regulatory statute. While the argument was about due process and equal protection under the laws as mandated in the Fourteenth Amendment and limitation of federal encroachment on state powers as derived from the Fifth Amendment, Justice Morrison R. Waite countered that "it has been customary from time immemorial for the legislature to declare what shall be reasonable compensation . . . [and] to fix a maximum beyond which any charge made would be unreasonable." The crux concerns private contracts and public interest, where the judiciary holds jurisdiction over the for-

mer and the legislative over the latter. By contrast, the important case of *Lochner v. New York* led to a majority decision by Justice Rufus Peckham which stated that freedom of contract (in this case regarding hours that could be worked in a bakery) could not be proscribed by acts of the legislature without the latter being in violation of the Constitution if the health of the worker and the public is not conclusively harmed. It is important to note, however, that Justice Oliver Holmes in his dissent argued against the sanctity of freedom of contract (and, by implication, the taking of property) Peckham supported and, moreover, determined the statue to be "a proper measure on the score of health." To Holmes, Peckham was more interested in promoting *laissez faire* economics than constitutional issues.

There were other Supreme Court decisions in the 1890s which took a different tack from White's opinion in *Munn*: namely "that proper procedure must exist on the state level if state regulation was to be in harmony with the Fourteenth Amendment." Also, regulatory decisions on rate-fixing must provide just compensation, as determined by court ruling. Here, again, is the critical issue of substantive due process in relation to the role of the judiciary in commission decisions construed as the taking of property in an unconstitutional fashion. Subsequently, in 1894, the California Railroad Commission referred to this view, which was, of course, counter to the wishes of those who created the Commission eighteen years before.

Response to these developments, spearheaded by the Traffic Association of California, a group of merchants in San Francisco, led to rate reductions by the Commission which the Southern Pacific challenged in the courts. A circuit court judge threw out the decision on the basis of violation of the due process clause. Other state cases were victories for the railroads. In effect the Railroad Commission was essentially emasculated by the actions of its commissioners, the power of the Southern Pacific and state and federal courts.

However, Gerald Nash claims that the

commissioners were hardly "mere creatures" of the Southern Pacific and "struggled valiantly to carry out the mandates of the new Constitution." Instead it was the "complexity of new difficulties," not "malfeasance" that led to their ineffectiveness. Moreover, their experiences paved the way for later commissions to be more effective by forcing Progressives to procure the services of experts; assume greater authority; develop a specialization of functions; and develop more cooperation with the courts. In 1884-85, for example, a proposal to reduce rates significantly led to the railroad developing the schedule because, Nash claims, the commission "lacked the funds or expert personnel." Other examples cited from the 1890s refer to the same conditions: lack of support from the state, inexperience and lack of knowledge on the part of the Commissioners; and effective political involvement from the Southern Pacific.

Deverell's views in *Railroad Crossing* are nearer to Nash than to McAfee. Deverell demonstrates that leaders, such as Francis Heney, John Eshleman and Hiram Johnson latched onto the long history of anti-railroad sentiment to link their fights against civic corruption in San Francisco and Los Angeles and bolster their credentials as reformers. In Deverell's view, the Progressives "followed a carefully choreographed public ritual: first building an octopus of a railroad corporation, then promising to destroy it. It worked magnificently."

As Walton Bean points out, "In the last third of the nineteenth century the great corporation became associated in villainy with the corrupt politician." He notes, "'The Railroad' was the principal offender in state politics" and, though the Southern Pacific did not dominate California's government "in every instance[. . .] it was extremely successful, and essentially corrupt." How deeply involved in state politics was the Southern Pacific or was it, as Deverell indicates, more a fictive invention of an octopus than actuality?

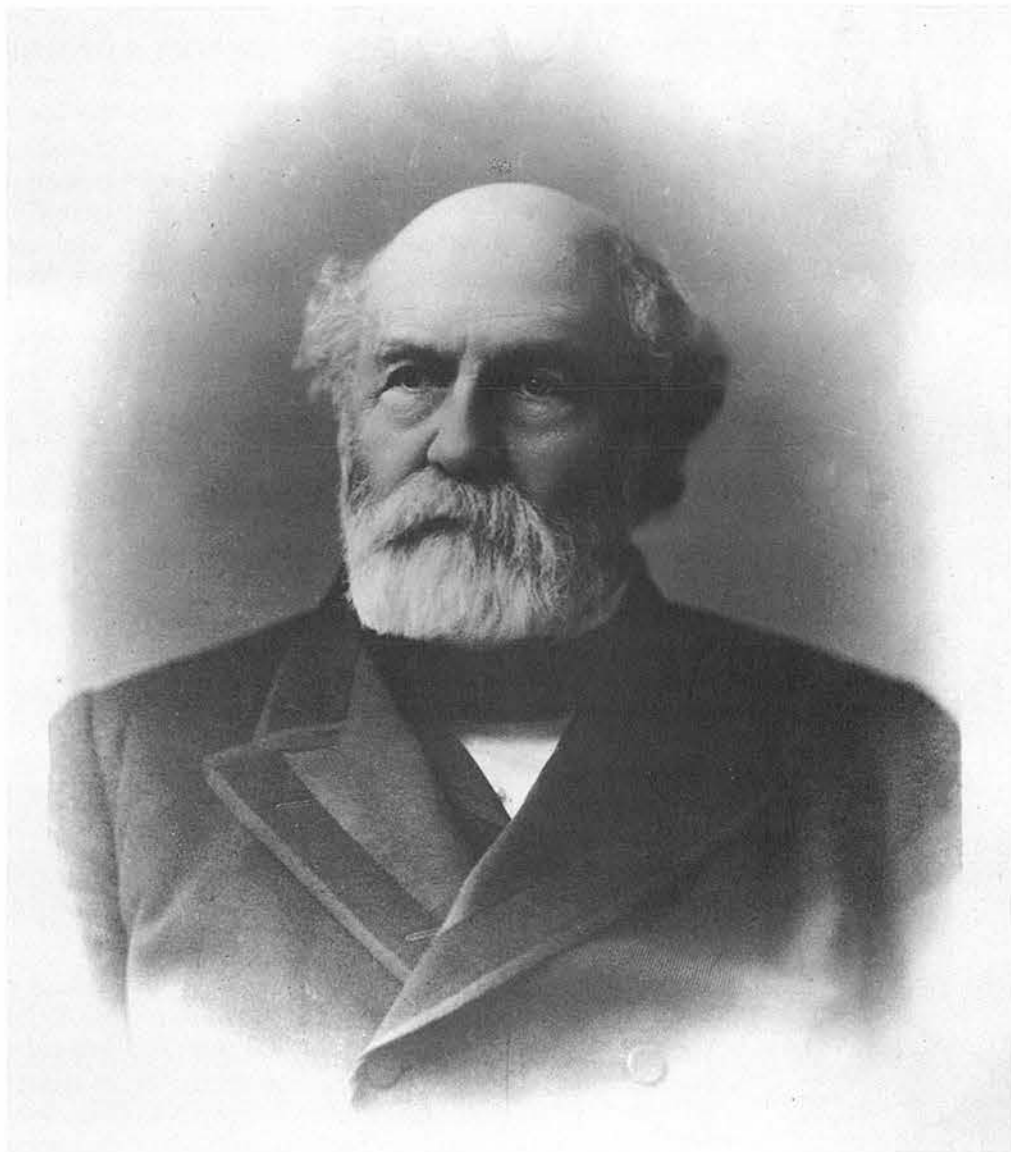
George Mowry's pioneering study, *The California Progressives*, stated that "the real

substance of power resided largely in the Southern Pacific Railroad. To a degree perhaps unparalleled in the nation, the Southern Pacific and a web of associated economic interests ruled the state." This was accomplished by earlier huge acquisitions of property due to the largess of the transcontinental railroad bills; demands for local subsidies; monopoly over the construction and operation of lines and resulting in high freight charges and fares; and political control. Again, the assumption was there: control of the legislature and the courts was the exclusive province of the Southern Pacific.

Spencer Olin generally agreed with Mowry's assessment, stating, "The Southern Pacific Railroad Company was thus the greatest single influence operating in California politics from 1880 until it was 'kicked out of politics' by Hiram Johnson and the California progressives in 1911." But, Olin used the term "greatest single influence" after professing that "it is impossible to gauge precisely the extent of the railroad's political power. . . ." Later, Olin modified his view of the Southern Pacific. Though the corporation wielded power to the degree that "it was attempting to name and control virtually every candidate for every political office from the governorship on down" and it was still the biggest influence in state politics, "it experienced difficulty in achieving its goals even during the later years of the nineteenth [century]" and "it was not the *only* [Olin's italics] such influence."

Even McAfee, in the relatively short time of five years between his article on railroad rate regulation discussed above and his book, *California's Railroad Era, 1850-1911* adjusted his view of the Southern Pacific as a Mephistopheles of the Railroad Commission to a company whose invincibility was "a popular image increasingly becoming closer to caricature than true likeness."

Finally, Nash, whose initial view of the Railroad Commission was less concerned with Southern Pacific domination than with structural problems, later characterized the railroad as "the villain, with its viselike grip (until 1911) on state and local politics."

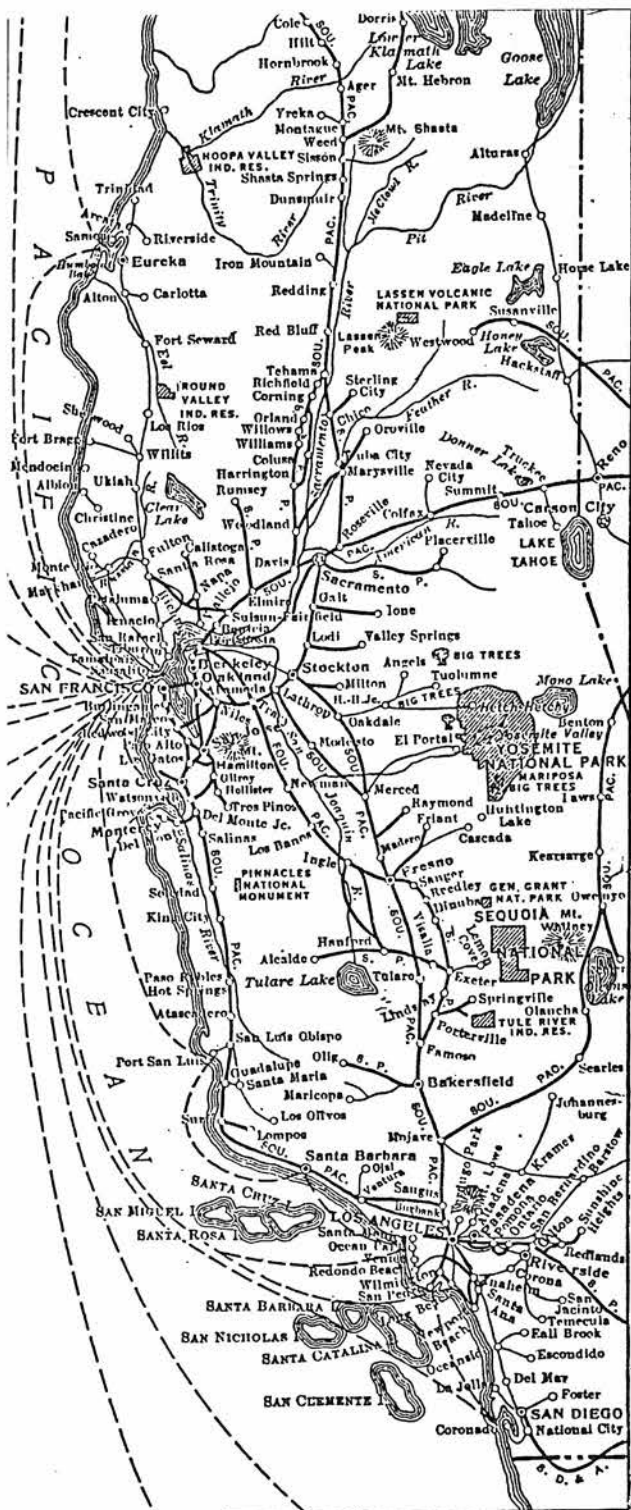


Collis P. Huntington in his later years. Courtesy of The Huntington Library.

There is no question that most historians' view of the Southern Pacific has been ameliorated from all-encompassing domination by the Octopus to the view that the Progressives largely invented the tentacled behemoth to satisfy their need for a voter-friendly pedigree in the first two decades of this century. In a recent work on the California Progressives, Deverell reviewed the historiography of scholars of the Progressive-era and wrote, "The progressive

period in California was far more complicated—and more important we argue—than an anachronistic duel between the Republican party and the Southern Pacific Railroad Corporation."

There is no question that Deverell, Sitton and other recent students of the Progressives are correct: there was a great deal more substance to the Progressive movement than lopping off the tentacles of the Octopus. A perusal of the media's coverage in the 1910



MAP OF CALIFORNIA

Southern Pacific.....
Other Railroad Lines.....

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campaign for governor, however, generally lends credence to the spirit of the old interpretations. A recent Johnson biographer, stated: "From 1880 to 1910 the Southern Pacific Railroad Company was unchallenged as the single largest influence in California politics. Its power was so pervasive that the company could almost name and control every candidate for political office from the governor down to local positions."

Although some historians treat the Johnson election in 1910 as a landslide that commanded a mandate to reconfigure California's political structure as he saw fit, the election was extremely close with Johnson winning by some 22,000 votes. Additionally, though much has been made of his vaunted antipathy to the Southern Pacific, his views were not all that distinguishable from his opponent, Democrat Theodore Bell. If anything, Bell was much more diverse and detailed in his platform—normally an appealing aspect, but Johnson's style as a pugnacious orator served him well because he delivered his perorations against the railroad in a convincing manner that Bell did not possess.

From his acceptance speech on, Johnson's campaign did indeed seem like a singular fixation on fighting the Octopus. Practically complaining that he had been forced by undue pressure to run, he issued the mantra in these terms: "I am going to make this fight an endeavor to return the government to the people and take it away from the political bureau of the Southern Pacific Railway Company."

A perusal of the press in the last few weeks of the electoral campaign reveals the similarity in the views of Johnson and Bell regarding the Southern Pacific and its alleged dominance of state government. Ironically, the *Los Angeles Times*, whose publisher Harrison Gray Otis was one of the most virulent of the orthodox, conservative Republicans, was so caught up in the October bombing of the Times Building and the search for the perpetrators that the coverage of the election was scanty. It seems almost that since the *Times* would certainly

have nothing to do with Bell and Johnson was a secessionist from the Republican standard, it chose to largely ignore the campaign. Fortunately, three other major state newspapers, the Los Angeles *Examiner*, William Randolph Hearst's organ and a supporter of Bell; the Sacramento *Bee*, a Johnson paper; and the San Francisco *Chronicle*, whose coverage of both candidates was rather equal in content, provided material about their positions on the railroad.

The *Chronicle's* coverage included a speech in Grass Valley where Johnson posed the rhetorical question, "shall the Southern Pacific Company be continued in sov[er]ign [sic] power?" In Roseville, it was reported that large numbers of Southern Pacific employees heard Johnson speak and "were free in their applause" when he railed against company counsel William F. Herrin and the corporation, calling for control of the railroads and special interests that "must be taught to keep their own place and not usurp the rights of the people." In San Francisco, Johnson addressed Herrin directly as "the distinguished gentleman who has saved us for many years the trouble of governing ourselves" and warned that "you must keep your hands off our politics and get out of our government or we will kick you out." Regarding his obsession with the Octopus, Johnson told a crowd in San Jose, "I have been accused of being fanatical. If it be fanaticism to seek to return to the people their government I plead guilty."

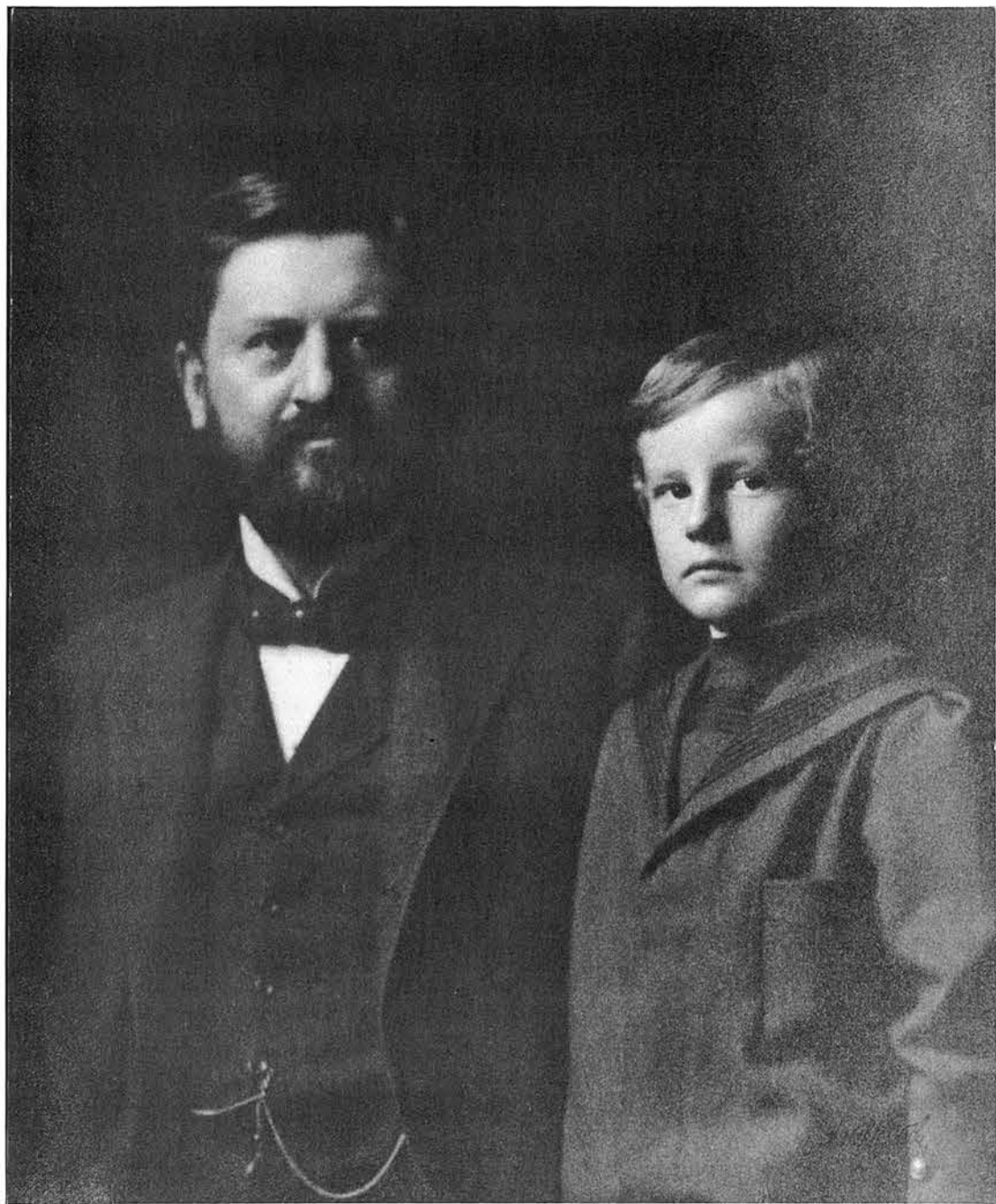
Even when he was being attacked for allegedly taking money from United Railroads of San Francisco in the Ruef graft trials, "Johnson was bitter in his denunciation of his enemies and charged the stories that are being circulated about him to the Southern Pacific Railroad Company and the 'interests'."

Meanwhile, the Los Angeles *Examiner's* coverage of its candidate is instructive. At a speech in South Pasadena, Bell claimed that Johnson's refrain of "Kick Herrin Out" was nothing new to him and that "you can't kick Herrin out too soon to please me, but I have an idea that the man who has been training

to kick him out for sixteen years can kick him out further than the man who has been training for the job six months." In Pasadena, meanwhile, Bell reminded his audience that he was the only member of Congress "who made a fight and voiced" the concerns of southern California shippers "for an amendment to the Interstate Commerce [Act] conferring the rate making power on the Interstate Commerce Commission." Bell's message was clear: he was the originator in the movement to fight the power of the Southern Pacific and he had the legislative experience and credentials to back it up. As the *Examiner* stated, "Bell is standing on a platform broad enough to hold all the people of California." Perhaps that was the problem—by focusing exclusively on an issue of popular concern and doing it with all the fervor of an Old Testament prophet, Johnson focused enough voters on his view that he pulled off a narrow victory over the twice-bitten Bell, who had lost narrowly in 1906.

Although William Randolph Hearst applied the spin that Johnson's victory was a deserved rebuke to the Republicans, the GOP swept every single statewide office, including a new slate of Railroad Commissioners, Alex Gordon, H. D. Loveland, and chairman John M. Eshleman, who was active in the Lincoln-Roosevelt League and had introduced the three railroad amendments and the Public Utilities Act to the Legislature, and overwhelmingly dominated the Legislature. This, in turn, led to the reconfigured and greatly empowered commission.

The Progressives, who dominated the legislature, immediately went to work seeking to greatly enlarge participation in the electoral process, with the now-standard features of California governance of woman suffrage and direct legislation (recall, referendum, and initiative). Another key package in the Progressive program was the reform of railroad regulation with the passing of the Railroad Commission Act and three separate amendments designed greatly to augment the power of the Commission.



William F. Herrin and his son, "Billy". Courtesy The Huntington Library

The railroad commission amendments did not stop with that particular industry; it extended to all utilities, such as the telephone and electric industries, as well as water. While the 1879 constitutional provisions for the Commission were "a significant innovation," the expanded power of the C.R.C. in 1911 certainly was as well.

The amended sections of the constitution, numbers 20-23, concern the regulation of rates and fares; anti-discrimination provision in charges for transport, including long and short-haul charges; the recasting of the Commission; and the new powers of the Commission in regulating public utilities.

Section 20, the greatest change, directly involved the constitutional issues of substantive due process and the taking of property. The 1879 text gave regulatory power exclusively to the Commission; the 1911 amendment stated "the decision of the said commission upon the showing so made shall not be subject to review by any court except upon the question whether such decision of the commission will result in confiscation of property."

The change to section 21 was greater. In the 1879 section, discriminatory charges were forbidden for both intrastate and interstate commerce, but Supreme Court decisions had made interstate commerce the province of the Interstate Commerce Commission. The amendment prohibited charges greater "in the aggregate" for shorter than for longer hauls "over the same line or route in the same direction, the shorter being included within the longer distance." Exceptions were possible, however, upon discretion of the Commission. Another key component provided for reparations to shippers deemed to have been overcharged by discriminatory rates by railroads.

The expansion of the Railroad Commission in section 22 entailed the following: members were increased from three to five and appointed by the Governor with staggered, six-year terms, unless the Legislature determined otherwise; the 1879 Commission was elected by the people from districts. The Legislature made perfectly

clear that the commissioners' authority was "plenary and unlimited."

Section 23 concerned public utility regulation and the C. R. C. was essentially given the same sweeping regulatory power over them as railroads, with the expressed provision that the Commission's power be over rates rather than "the making and enforcement of local, police, sanitary and other regulations, other than the fixing of rates, vested in any city and county or incorporated city or town," which were exempt.

The election was, indeed, a sweeping success for the Progressives. All 23 amendments passed, most by huge majorities. An exception was woman suffrage, which seemed headed for defeat before squeaking by with a small majority. Amendments 12, on C. R. C. rate regulatory power enlargement; 16, on the expansion of the C. R. C. to five members and provisions for their election and appointment; and 23, forbidding short-haul rates higher than for long-haul all passed at 2-1 majorities or higher.

Yet, the same sorts of divisions by the press regarding their support or lack of for Hiram Johnson's gubernatorial candidacy are reflected in the 1911 amendment election, as well. The *San Francisco Chronicle*, for example, in its editorial on amendment 16 regarding the Commission (necessarily linking it to amendment 12, which enlarged the tribunal's powers) attacked "a gross abuse of the appointing power." Even though the *Chronicle* was "well content . . . with the wisdom of the present Governor, his successor may be one of the old kind [i. e., a puppet of the Southern Pacific] and we cannot know what bobbery he might induce a subservient Legislature to kick up." This was a view similar to the *Chronicle's* opposition the previous day to "Reform Run Mad" by "our well-meaning but hysterical Legislature" and five days later to the "hollow mockery" of a voter who was "merely a puppet pulled by strings which are scarcely hidden by the scant curtain" of special interests (the Octopus?) in discussion of the direct legislation amendments. After the landslide, the *Chronicle* pointed out that "The worst feature of the

election was the small vote cast" with less than 50 per cent of the electors casting ballots. The result consisted of "grave mistakes" in offering direct legislation to the people, who "are plainly disposed to accept the leadership they installed last November, and put through whatever that leadership suggests."

The *Los Angeles Times* was generally in harmony with its northern colleague. An election day editorial stated that "California is to pass judgment today on a proposed transition from the long-established representative form of government to a hybrid of democracy and autocracy." The supporting example cited was the railroad commission and its proposed appointive structure. The paper also decried its sweeping regulatory control over all public utilities and the Legislature's unlimited privileges with regard to the Commission's operation. Further, it claimed, the idea of recall touted the democratic ideal while the expansion of power in "the greatest commission in the state" tended, without the involvement of the public, toward the autocratic end of the spectrum. Employing its favorite adjective in calling the Johnson-Lissner machine (Meyer Lissner was the chairman of the state Republican Party) radicals who were pushing their agenda without careful preparation or consideration, the *Times* called the amendments confusing and chaotic, urging voters to defeat the entire slate of them, including the railroad measures, which "propose a centralization of despotic entrenched [sic] power over the greatest instrumentalities of modern society." The proposed amendments "are all of the same kind of radicalism" and "A vote of 'No' is a rebuke to those who would upset established representative government for whim or caprice or malice".

When voters rebuked the *Times* instead, the paper responded like the *Chronicle* that the low turnout was a clear indication that "part of the people rule." Its criticism that "people have continued to rule, either by active participation in our politics or by masterly inactivity as conspicuous and unmanly as that of the Tories in the Revolution who would not fight on

either side" led to the logical conclusion that "California was never more completely bossed in politics than today." Governor Johnson was "one of the most skillful drivers that ever touched a crank or button" on a "machine [that] is one of the finest ever constructed."

In contrast to the *Chronicle* and *Times* was the *Sacramento Bee*, which supported all the amendments and was the only major paper to feature more than one editorial on them, classing them in importance with woman suffrage and direct legislation. One editorial called for the electorate to "Give More Power to the State Railroad Commission." It echoed the time-worn sentiment that "For many years there has been virtual railroad monopoly." *Times* had changed somewhat, cried the paper, and "The new Commission is a tribunal in which justice is done, and from which substantial relief may be had in all cases of unreasonable charges." It called for the approval of the three amendments, noting, "There scarcely can be a doubt of their approval by a great majority of The People." However, the paper gave editorial space to State Controller A. B. Nye, whose admonitions on the impossibility of voters being well-informed enough on the issues to vote for them competently largely echoed the concerns of the *Chronicle*. But, when the election was over, the *Bee* hailed the passage of the amendments as "A Great Victory Gained for Popular Government" noting, "Only those Reactionaries who distrust the People, and those Interests which seek to profit at public expense, have found reason for opposing extension of popular rule by the ballot."

It is worth noting that, as the campaign was conducted, important state and national events regarding railroads occurred. First, thousands of machinists, boilermakers, blacksmiths and sheet metal workers were on strike against railroad companies nationwide. This led, in turn, to violence in several cities. Next, the Interstate Commerce Commission conducted hearings in Washington on the "Pacific Coast" cases, in which railroad companies filed injunctions

against the I.C.C. for its rate reduction order. This was followed by a federal commerce court's ruling allowing an increase in the shipping of lemons, which was a rebuke to the I.C.C. ruling.

In the aftermath of the 1911 amendment election, Governor Johnson called a special session of the Legislature, which resulted in the Public Utilities Act, passed on 28 November. The act retained the increase in Railroad Commissioners, with Edwin Edgerton and Max Thelen added to the group of incumbents, John Eshleman, H. D. Loveland, and Alexander Gordon. Thelen, in fact, had just returned from a tour of twelve states to examine railroad and public service commissions and, in his report, advocated many measures that were incorporated into the Public Utilities Act, including the expansion of the jurisdiction of the Commission to encompass utilities.

A key component of the act was that while the Commission would maintain enforcement privileges for its orders, these decisions were subject to due process, in the form of judicial review by the California Supreme Court. The Court, however, could not take into consideration any matters not pertaining to a Commission hearing or ruling. In the first two-and-a-half years of the new Commission, there were over 1,500 decisions, but only eight cases brought before the Supreme Court.

A perusal of the decisions of the Railroad Commission in the first nine months after the Public Utility Act took effect in March 1912 shows that the vast majority of decisions by the tribunal were over matters unrelated to rate regulation, most quite mundane, such as requests to build spur lines, erect track over public conveyances, issue stock and complete mergers or purchases of companies. Yet, there were many cases heard with respect to rate issues. Most of these involved requests for reparations by shippers alleging unjust and unreasonable charges by the Southern Pacific. One case which established a precedent for later decisions was *Scott, Magner, & Miller v. Southern Pacific Company*, decided on 26 December

1911. Because of the recent amendment election, the defendant stated that the Commission had no jurisdiction over complaints that alleged overcharging for shipments before that date and that the statute of limitations on such an allegation had expired. H. D. Loveland's report refuted their first contention by stating that Section 21 of Article XII of the state Constitution, as amended, was clear in stating that the Commission could not be prevented "from ordering and compelling any railroad or other transportation company to make reparation to any shipper on account of the rates charged to said shipper being excessive or discriminatory, provide no discrimination will result from such reparation." The new remedy of the amended constitutional provisions allowed Loveland to declare that "it is clear that the State can at any time create an additional remedy to apply to an existing right" in terms of reparations, provided the statute of limitations had not expired. The Wright Act of 1909 concerning reparation hearings provided a one-year limitation on such requests, so for Scott, Magner & Miller there was no grounds for reparations, since their situation applied to 1909, well before the 10 February 1911 repeal of the Wright Act and its one-year provision. Still, the statement made by Loveland with respect to the Commission's power to order reparations was repeated again in decisions.

A case concerning long and short haul rates came up in March 1912. In *Traffic Bureau of the Merchants Exchange v. Southern Pacific Company, et. al.*, the commission heard arguments from the plaintiff that the Commission establish just and reasonable freight rates in San Joaquin Valley lines of the Southern Pacific and Atchison, Topeka, and Santa Fe Railway companies. In its decision, the Commission noted the provisions in the amendment of October 1911 "preventing the charging of a greater compensation in the aggregate for the transportation of a like kind of property for a shorter than for a longer distance over the same line or route in the same direction. . ." and found the rates charged by the companies "excessive, unjust

and unreasonable." Therefore, the Commission established a new schedule of rates, one for each railroad company. In another example, however, the Commission ruled that because a majority of long and short-haul fares were reduced in one schedule involving railroads using scrip books, some increases could be tolerated.

There was some leeway, however, in the matter of fare reductions. If a company's profit margin was sufficient to justify a reduction, it would not be taking property to cut rates, as long as the change did not deprive the company of a just and reasonable profit. For example, *In the Matter of the Application of the Quincy Western Railway to Increase Passenger Fares*, the Commission allowed the company to so raise their fares because

It appearing from an investigation of the records of applicant that the railroad is not earning operating expenses, and that unless additional business is developed by an extension of the road it will have great difficulty, even with the increase in passenger rates now asked, to meet its operating expenses. . .

When, however, the Nevada-California-Oregon Railway requested permission to raise fares on the grounds "that the transportation rates charge by it do not yield an adequate return . . ." for the line to compete with another company, the Commission ruled that "applicant has earned a fair return on a fair value of its property" and that "The public cannot be expected to pay rates high enough to yield, not only fair returns on the investment, but to create a fund for construction of extensions and later be called upon to provide interest thereon."

Another case of interest was a request in July 1912 by the state's fruit growers "to intercede before the Interstate Commerce Commission in their behalf in [a] question involving the reasonableness of freight rates . . . and other matters." Although the growers felt that a section of the Public Utilities Act was relevant, the Commission, accused as it was of wielding and seeking too much power for itself, declined, stating "under all

the circumstances it is neither necessary nor advisable for the Commission itself to assume such a burden." The Commission intended to remain firmly in the business of resolving disputes over rates within the state, not expanding its range to include dealing with the Interstate Commerce Commission.

Regarding disputes, the Public Utilities Act allowed companies recourse to the courts in those rare cases. As Bruce R. Bringham indicated in his study of the relationship between the Commission and the State Supreme Court, the latter was "notoriously conservative." Even though the Progressive political apparatus held sway in California politics after the 1910 elections, the Court determined to have more of a say in the rulings of the Commission than was called for in the amendments or the Act.

The first case the Court considered that affected an order of the reformulated commission was *Pacific Telephone and Telegraph Company v. Eshleman* in 1913, regarding an order by the Commission forcing the plaintiff to connect its lines to those of two local telephone companies and provide their customers with long-distance service. It is significant that this was a public utility case, rather than one involving railroads, yet the underlying constitutional issues are present: namely, substantive due process and the takings of property without just compensation.

An issue in due process was the Court's power of review. In his majority opinion, Justice Frederick W. Henshaw acknowledged that the Constitution of the state granted the Legislature the power to create a railroad commission able to issue reasonable orders. Further, the right to eminent domain was also granted to the Commission so long as compensation was made in advance. Henshaw also recognized that "the deprivation of jurisdiction of the courts of the state may not be questioned" in regard to Commission decisions and that awards for eminent domain property takings did not require "the intervention and verdict of a jury." Yet, he skirted around the authority issue by striking down the order

because "the order in question admittedly gives no compensation for the taking of the petitioner's property and is therefore void by force and virtue of the constitution of the state and of the United States." It was a clever argument and one used in other decisions. While Henshaw identified the Commission as culpable, colleague Justice M.C. Sloss concurred in the decision, but identified Public Utilities Act Section 40, which authorized the ordering of telephone connections, as the culprit by virtue of the absence of compensation. Justice F.M. Angelotti, who dissented, meanwhile wrote that Section 40 involved the connections of private property for public use, and therefore, he was unconvinced that the order was "a taking of the property of the complaining company without compensation." As a defect of law, Angelotti believed the matter should go to the U. S. Supreme Court, but there was no such action.

The taking of property principle elucidated by Henshaw reappeared in a 1916 case requiring the Atchison, Topeka and Santa Fe Railway Company to reconstruct a line in Southern California abandoned by a railroad company it purchased much later. The Commission's order was based on public necessity and benefit and that the cost to engage in such a project was justified by present and future use. This was based on Section 36 of the Public Utilities Act allowing for a ruling to require structural improvements "to secure adequate service or facilities" and "promote the security or convenience of its [the railroad's] employees or the public." Two lines of defense by the railroad were the Commission's authority to make the order and to base it on the probable earnings to the company. Henshaw's response was that the Commission was not empowered to enforce private contracts, even if it was allowed to force a utility to restore service it had been providing. The problem was that twenty years had elapsed since the line in question had last been used and its abandonment did not devolve responsibility upon a later owner to revive it. Constitutionally, the decree invoked the

Pacific Telephone and Telegraph case and applied a broad interpretation to taking property expressed there: "I think it cannot be doubted that an order, compelling the owner of private property, against his will, to subject that property to the use of the public or of an individual, amounts to a taking of property." Violation of due process, which the court was concerned about in terms of its jurisdictional authority, led to the conclusion the Commission had overstepped its bounds.

As Bringham stated, "The California Supreme Court was out of step with most courts in its refusal to allow a regulatory agency to order railroad track extensions." The increasing power of public necessity or benefit over private property rights was becoming the norm. If destructive competition and public sentiment were kept in check and stockholders received fair returns on their investment, railroad companies were happy and the Commission was part of that strategy. As a throwback to the era of the sanctity of private property rights and the unobtrusiveness of government, the California Supreme Court was out of step with modern regulatory theory. The fact that it hardly heard any cases from Railroad Commission hearings demonstrates that even the Octopus was recognizing that the key was not conflict but creative adaptations to changing situations, so long as the bottom line was met.

What was quite significant about the California Railroad Commission in the years immediately following 1911 was that business leaders did often lend their support to the Commission. This was true when power companies were assured that rate schedules would account for the difference in costs incurred between power provisions for mountainous, as opposed to lowland, areas. Further, concerns that exempt municipalities had undue influence led Commissioner and Counsel Max Thelen to prepare a bill in 1915 that brought public utilities in incorporated cities and towns under the aegis of the Commission. Once this was passed, support came from all quarters and much of it revolved around the belief that regulation

and concomitant stability would lead to more valuable securities and limit unwanted competition. The Commission's focus on reasonable rates and standards for utility competition were palatable because, for the former, rate considerations were based on service costs and in the latter, as Blackford states, the Commission recognized a "natural monopoly", so that too much competition would bring low rates and drive some concerns out of business, leaving the field to the powerful companies, which would then drive rates unreasonably high. Blackford cited an attempt by U.S. Attorney General James McReynolds to dissolve the connection of the Southern Pacific and Central Pacific railroads, in which the Commission supported the railroads. Eventually, the Interstate Commerce Commission agreed and the example shows that the Commission was not always unfavorable to railroad and utility interests. Even Herrin, whose posterior was the all-consuming target of Hiram Johnson's anti-railroad footwork stated that no "railroad manager would agree to dispense with business regulation at the cost of returning to the old conditions."

The role of constitutional law principles in the regulation of California railroads and utilities is a complex, changing one. At the 1878 Constitutional convention, the outcry against the Southern Pacific led to the first constitutionally created regulatory commission in the United States. Whether the Commission failed because of inexperience and lack of support or because of the stranglehold of the Octopus' tentacles, the changing face of constitutional law in the United States, as regards substantive due process and taking of property, gave impetus to Progressives by 1910 to pursue their ideal of an effective Commission. Revitalized by a program of constitutional amendments that greatly expanded its authority, the Commission was actually more moderate, even if not seen so by the conservative State

Supreme Court, than many anticipated. Setting rate regulation on the basis of cost to the company and concerned about keeping both monopolization and unrestrained competition out of the state's utility market, the Commission was able to satisfy most of the railroad's critics as well as the railroads and utilities, and its continued existence demonstrates its power and durability.

Suggested Reading

Bean, Walton. "Ideas of Reform in California." *California Historical Quarterly*, 51:3 (1973): 213-226.

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Bringhurst, Bruce R. "The California Supreme Court and the Progressive Railroad Commission, 1913-1923." *Southern California Quarterly*, 57:2 (1975): 179-201.

Deverell, William. *Railroad Crossing: Californians and the Railroad, 1850-1910*.

Deverell, William and Tom Sitton, eds. *California Progressivism Revisited*.

McAfee, Ward. *California's Railroad Era, 1850-1911*.

Mowry, George. *The California Progressives*.

Nash, Gerald D. "The California Railroad Commission, 1876-1911." *Southern California Quarterly*, 44:4 (1962): 287-305.

Olin, Spencer D., Jr. *California Politics, 1846-1920: The Emerging Corporate State*.

Olin, Spencer D., Jr. *California's Prodigal Sons: Hiram Johnson and the Progressives, 1911-1917*.

(Monthly Roundup Continued from page 2)

ing and processing. Many families were very successful in the restaurant business, including the Di Maggio family which had a couple of sons who were very successful in another field. In Los Angeles, Alexis Perino furnished an outstanding example of success in this field, and Musso and Frank is one of the city's oldest establishments.

The immigrants entered into society and community affairs. San Francisco has had five mayors of Italian ancestry.

Success and achievement were not limited to the coast. The famous cowboy detective, Charles Siringo and the founder of the Tombstone *Epitaph* are other examples.

While many kept their original names, many found success after changing theirs. This was especially true in the movie industry which for years was dominated by immigrants.

With so many examples of persons who achieved and became major factors in the economic, social and cultural life of the West, it gives one reason to question the accepted view of the the immigrant. Did the West provide a more welcoming experience? One that led to achievement, acceptance and acculturation.

JANUARY 2000 MEETING

Registrar of Marks and Brands, Eric Nelson, approached the history of Los Angeles' fabled hotel, The Pico House, in an unique manner. Instead of the usual approach, he used documents from his personal collection to trace the story of the hotel.

By using an invoice for furniture, he was able to reconstruct the luxurious fittings of the hotel. Other invoices traced construction and the lavish meals the hotel presented.

When the Pico House opened, many considered it to be the finest hotel in the West; no one questioned that it was Los Angeles' finest. The building, facing the Plaza, was Los Angeles' first three story building. It remained the city's tallest structure until the Merced Theater owners put a capstone on their building to make it taller. The brick structure contributed many firsts



Photograph by Frank Q. Newton

January Meeting Speaker Eric Nelson.

to Los Angeles life, including being the first hotel to use gas lighting.

Pico's financial troubles were illustrated by various documents. To raise money, Pico leased the hotel to various managers. Other documents showed that Pico was excellent at borrowing but very poor about repaying.

Watching the history of one of Los Angeles' greatest landmarks through documents gave an intimacy and immediacy to the story. One only wishes that Eric had a document showing the completion of the restoration—an event the city has awaited longer than one wishes.

FEBRUARY 2000 MEETING

Will Bagley, noted Mormon historian, regaled the Corral with a biography of Sam Brannan. Mr. Bagley, who is the editor of the Arthur H. Clark Company's series, "Kingdom in the West: The Mormons on the American Frontier," recently published *Scoundrel's Tale: The Sam Brannan Papers*.

Sam Brannan, one of the most colorful characters in the West, was born in Maine and moved to Ohio where he became a journeyman printer. After moving to New York state, he converted to Mormonism in 1842. In 1845, he was selected to lead a band of 230 Mormons to establish a colony outside of the United States. To his disappointment, the United States had occupied California when he arrived on the *Brooklyn*.



Photograph by Froylan Tiscareño

February Meeting Speaker Will Bagley.

Always the opportunist, Brannan opened California's first flour mill and began San Francisco's first newspaper, *The California Star*. These activities made him the

star of California's first jury trial, charged with embezzling Mormon funds. The trial resulted in a hung jury.

After the discovery of gold on the American River, Brannan is credited with bringing the news to San Francisco. He appeared in the city wearing mining clothing, waving a bottle of nuggets, screaming "Gold, Gold on the American River." Many suggested he had taken the precaution of stocking his store in Sacramento first.

Brannan and Brigham Young had a falling out over Sam's desire to colonize California and make it a Mormon colony.

Over the years, Brannan gained wealth, but in the end, he died of alcoholism and in poverty.

Mere written word can not convey the excitement and enthusiasm of the speech.



Corral Chips

Ranger Active **ROBERT CLARK** is now the President of Westerners, International. Congratulations, Bob.

MSGR FRANCIS WEBER received the Oscar Lewis Award from the Book Club of California for outstanding contributions to Western history.

The Mayor of Los Angeles and the Los Angeles Cultural Heritage Commission granted an Award of Excellence in Historical Preservation for the restoration of the San

Fernando Mission Convention done under Father Weber's supervision.

Charter member **GLEN DAWSON**, Southern California's most senior member of the Sierra Club (Life membership #14), was the featured speaker at the Chapter's Annual Award Banquet.

ROBERT V. SCHWEMMER became honorary Naval Aviator for his successful feat of making a catapult-assisted take off and an arrested landing from the *USS Abraham Lincoln*.

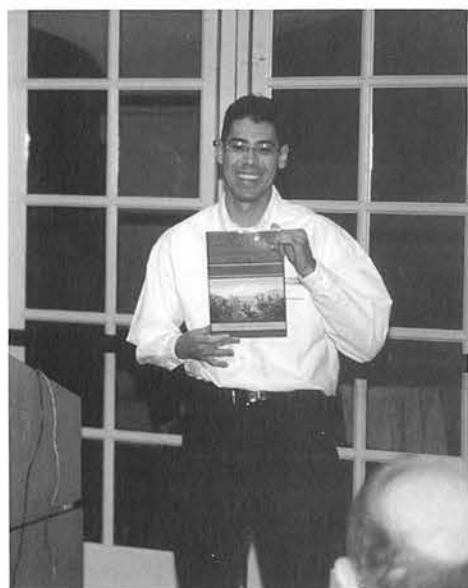
MARTIN RIDGE made the keynote speech at the Los Angeles History Conference sponsored by the Historical Society of Southern California. Among the audience were **THOMAS ANDREWS, REESE BENSON, ROBERT BLEW, CHRISTIE BOURDET, SIG DEMKE, DONALD DUKE, POWELL GREENLAND, AL AND SANDRA GREENSTEIN, STEVE KANTER, GLORIA LOTHROP, PETER MAUK, DOYCE NUNIS** and **RON WOOLSEY**.

MARTIN RIDGE and **FRANK Q. NEWTON** were cited in the in the show's catalog for their contributions to the Huntington's most recent exhibit, "Land of the Golden Dream."

In attendance at the Whitsett Lecture were **THOMAS ANDREWS**, **GOREN BAKKEN**, **ROBERT BLEW**, **GLORIA LOTHROP**, **RAY PETER**, and **MSGR. FRANCIS WEBER**.

The Huntington has been drawing many of the Corral members. **ABE HOFFMAN** and **FRANK NEWTON** attended the Pacific Rim Seminar. The following week, **ROBERT BLEW**, **JEANETTE DAVIS**, **AL AND SANDRA GREENSTEIN**, **FRANK NEWTON**, **BILL PASCHONG** and **MARTIN RIDGE** were in attendance at the Gold Rush Conference.

Former member **KENNETH M. RAMSEUR III** died in November 1999.



Photograph by Frank Q. Newton

Michael Tripp, second place 1999 student essay winner.

Directory Changes

To Active

Steve Kanter
Paul Showalter
Richard H. Thomas

To Associate

Christie Bourdet
Lou Bourdet
Froy Tiscareño

New Members

Kenneth Cilch
Westerners, San Diego Corral
P.O. Box 87307
San Diego, CA 92138-7307

Robert T. Dodge
1022 So. Bradshawe Avenue
Monterey Park, CA 91754

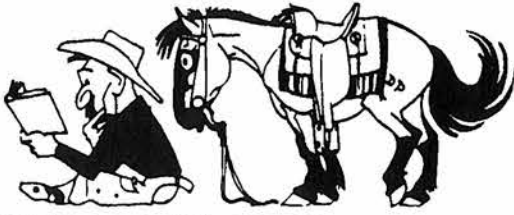
Mark Edlund
715 Gayley Ave., #207
Los Angeles, CA 90024

Joe Feeney
P.O. Box 336
Sierra Madre, CA 91024

Richard R. Irwin
2434 Lee Avenue
Arcadia, CA 91006

William R. Paschong
251 South Mariposa, #303
Los Angeles, CA 90004

Michael Tripp
7914 La Mesa Blvd., #8
La Mesa, CA 91941



DOWN THE WESTERN BOOK TRAIL ...

A good book is the precious life-blood of a master spirit, embalmed and treasured up on purpose to a life beyond life.

—John Milton

WEST-FEVER, by Brian W. Dippie. Seattle: University of Washington Press, 1998. 128 pp. Illustrations. Cloth, \$35. Order from University of Washington Press, P.O. Box 50096, Seattle, WA 98145-5096, (206) 543-4050.

This book gives lie to those uninformed people who dismiss the Autry as just another monument to a popular broadcasting, motion picture and performing legend. In reality, since its opening a decade ago, the Autry has achieved an enviable place among the most prestigious thematic museums in the United States.

As it has evolved, the museum far surpasses what the "singing cowboy" originally imagined and the dream continues. Its continually changing exhibits, stretching over 50,000 square feet, feature manuscripts, books and works of art describing the West from prehistoric times to the present day.

West-Fever presents an attractively-scripted narrative with the legendary Charles M. Russell as a tour guide through the realm of western history and myth. Brian Dippie's use of Russell is a clever device for many reasons, not the least of which is the artist's reservations about California which he once compared to near beer - "it looks good, but that's it." Though he regarded Montana as the real west, Russell grudgingly admitted that the west defies boundaries.

The book is gorgeously illustrated and readers will come across many old friends.

Among those of special significance is the Steinway Upright Piano, decorated by Edwin William Deming, which Edward L. Doheny acquired in 1903. Its case is mission oak style with three paintings, including the "Encampment of Plains Indians by a Running Stream." Another is an oil rendition of "Miner: A Moment at Rest" which was painted by Ernest Etienne Narjot de Franceville in 1882. In that portrayal of "domestic tranquility in an all-male world," the artist offers a sentimental rendition of California pioneer life as defined by "niceness." The French-born artist is probably best remembered for a painting he did of Archbishop Joseph Sadoc Alemany in 1878.

This beautifully-illustrated, interestingly-written and colorfully-presented book describes a representative number of the 40,000 items in the collection. The author encapsulates the overall purpose when he observes that an inclusive West will always have "to make room for the old as well as the new, the mythic as well as the mundane, comedy as well as tragedy."

Westerners! Read this book, visit the museum! Then, in the words of Councilman John Ferraro, "get down on your knees and thank God for Gene Autry's generosity to our community."

Msgr. Francis J. Weber



CULTURE Y CULTURA: *Consequences of the U.S.-Mexican War, 1848-1848*, by Iris H.W. Engstrand and Richard Griswold del Castillo. College Station: Texas A&M University Press, 1998. 160 pp. Illustrations, Suggested Readings. Cloth, \$30.00. Order from Texas A&M University Press, Drawer C, College Station, TX 77843-4354, (409) 845-1436.

Culture Y Cultura is a provocative look at the legacy of the Mexican American War. The U.S.-Mexican war reflected opposing cultural perspectives with conflicting legacies. In terms of U.S. interests, the war was part of a westward movement and a national fervor justified by the romantic notion of manifest destiny. To Mexico, the American victory

was a brash "land grab" that exploited and disenfranchised the conquered people. This triad of essays considers lingering resentments and the future of Mexican-Americans within the framework of conflict and conquest.

Iris Engstrand's historical overview addresses the impact of the war on the southwest. This scholarly entry details the background of Spanish settlement, Mexican independence, and U.S. expansion. Engstrand considers the Treaty of Guadalupe Hidalgo a pivotal document linking both Mexico and the U.S. in economic and political policies that extended into the 20th century. It is an ambitious sweep, but Engstrand successfully crystallizes the challenges that enjoin the two countries. Border tensions have melded the politics and economics of the southwest, highlighting the complex problems surrounding immigration and accommodation.

Richard Griswold del Castillo considers the implications of the Treaty of Guadalupe Hidalgo as a galvanizing influence in the Mexican American identity. Griswold del Castillo traces the development of civil rights movements within the context of the treaty's broken promises. He suggests that future progress will center on political, economic and human rights issues.

Elena Poniatowska's concluding essay signals a hopeful future. Despite exploitation, poverty and discrimination, Mexican Americans can reclaim their past by looking from within their cultural identity. She artfully accentuates a peoples' will to endure, rooted in the dignity of their labor and deep religious convictions. These enduring cultural strengths will overcome the prejudice of a star-crossed legacy.

Culture Y Cultura contains over a dozen fine prints ranging from the mid-19th century period to recent photographs that document past civil rights organizations and protests. The essays are duplicated in Spanish, a sensitive touch and useful in expanding readership. Project manager Suzanne G. Fox, coupled with the support of the Autry Museum of Western Heritage, provide a handsome hardbound edition with

fine printing and elegant illustrations. *Culture Y Cultura* is a provocative look at California's frontier legacy for two cultures with one past.

Ronald Woolsey



A SENSE OF THE AMERICAN WEST: *An Anthology of Environmental History*, edited by James E. Sherow. Albuquerque: University of New Mexico Press, 1998. 308pp. Notes, Index. Cloth. \$60: Paper, \$19.95. Order from University of New Mexico Press, 1720 Lomas Blvd. NE, Albuquerque, NM 87131-1591, (800) 249-7737.

Anthologies intended as college texts are always problematic because they challenge the expectations of the reviewer. This one is no exception. James Sherow has reprinted essays that span the history of the West from the early nineteenth century to the present. The first three sections of the book are both theoretical and analytical; the final section of the book deals with the work of environmental activists. Sherow's selections indicate an awareness of race and gender. Although all of the articles are informative, the essays by Sherow and Dan Flores are the most intriguing. Sherow is committed to the idea that each place has a spirit, not in a conventional religious sense, but in a way that people who live in a place long enough relate to it. The idea is shadowy, but both his and Flores's essays illustrate it. Both lament the transient behavior of early Americans, who were given to creative destruction rather than to spiritual attachment to the land.

Sherow's brightly, well-thought out introduction surveys the recent scholarship dealing with environmentalism. Although he recognizes and appreciates the works of other scholars, he rejects many of their ideas because his approach to the environment is both holistic and based on the work of multidisciplinary scientists. Therefore, for Sherow, there is no first and second landscape—one pristine, the other with a human presence. Humans and other forms of life exist in a dynamic environment; and

although they have limited power to alter it, they are as much at the mercy of external physical forces as any other life form. Both Sherow and Flores demonstrate this. Flores shows how changes in the bison population on the southern plains coincided with rainfall patterns. He explains how the southern plains Indians, like the bison, prospered during periods of abundant rainfall; but they starved during drought cycles. As Flores's narrative unfolds, clearly neither the white man's guns nor the Indian's horse were solely responsible for the decimation of the bison. The Indians suffered terribly because they had unknowingly constructed a way of life and a spiritual outlook based on rainfall. Sherow's essay on Indian horse culture deals with the same subject but is more narrowly focused on scientific research. Both Flores and Sherow look at the carrying capacity of plains; the number bison or horses that the grass could maintain. Their finding will no doubt come as shock to students who are unfamiliar with recent scholarship.

It is no disservice to the other essayists, whose work is also interesting to emphasize Sherow and Flores because both illustrate the book's primary themes. The anthology also includes articles demonstrating that the cityscape is of equal concern to environmentalists. Anyone conversant with conventional western history, either old or new, will find this collection of essays a refreshing new way to thinking about western history and the environment.

Martin Ridge



VOYAGE TO CALIFORNIA WRITTEN AT SEA, 1852: *The Journal of Lucy Kendall Herrick*, edited by Amy Requa Russell. San Marino: Huntington Library, 1998. 136 pp. Illustrations, Bibliography, Index. Cloth, \$24.94. Order from Huntington Library, 1151 Oxford Road, San Marino, CA 91108, (626) 405-2172

Voyage to California Written at Sea, offers an unique insight to an English family's American experience through the eyes of young Lucy Kendall, her parents and family.

The book was edited by Lucy's grand daughter, Amy Requa Russell, a writer who died in 1985, and Lucy's great-great-grand daughters, Marcia Good and Mary Good Lindgren, prepared the manuscript.

Lucy's father, Joseph, a sign painter and decorative painter and artist left for America with his wife, Charlotte, in 1830 to find new opportunities after his business failed. They left Lucy behind to live with her grandparents and aunt. The first section of the book is Lucy's memories of her years in England written for her daughter in 1902-1906. This section gives the reader an account of life in rural England and through her parents, life in New York in the 1830's.

Lucy's family returned to England, and then went back to New York to begin a new sign painting business. During the family's moves, Lucy sailed to New York and back to England making many passages across the Atlantic. The next section of the book includes family letters and the news that her father Joseph has decided to become a forty-niner.

Through letters, we follow Joseph's travels from New York to San Francisco around Cape Horn. He quickly discovered that gold mining was not for him and started a painting business in Stockton. He moved to San Francisco and in 1852 he sent for his wife, Lucy and his other daughter, Annie, to join him. They left aboard the *Josephine* on April 28, 1852, from New York. This begins Lucy's day by day account of her 20,000 mile trip to San Francisco. The journal is wonderfully written describing her fellow travelers, crew, the ship and the sea. We learn much about such a journey: the food, storms at sea, meeting other ships also headed to the "gold fields" of California and a layover in Valparaiso, Chile. The journal includes several of Lucy's drawings.

Lucy's journal tells us much of her great character, sense of humor and selflessness. After 137 days at sea, the *Josephine* sailed into San Francisco Bay and the journal ends.

Following the story of her passage is an afterward telling us of Lucy in California, her marriage, her six children and her life

which ended in 1906 at age 78.

This is a beautifully printed and bound book. The care in presenting the story of Lucy Kendall Herrick, from the introduction to the afterward, frames her journal well. We get a taste of life in England, New York and California from the 1830s to after the gold rush passed. I recommend this book for its history and color of its time but believe that its great strength is its writing and well drawn portrayals of the people it brings to life.

Karl Schiller



REOPENING THE AMERICAN WEST edited by Hal K. Rothman. Tucson: University of Arizona Press, 1998. 208 pp. Notes, Index. Cloth, \$35; paper, \$15.95. Order from University of Arizona Press, 1230 N. Park Avenue, Suite 102, Tucson, AZ 85719, (520) 621-8656.

Those interested in environmental and related issues of the American West will find this book filled with both old and new insights into the problems facing the area. Ten essays explore environmental topics ranging from western history to tourism to multiculturalism. The "reopening" in the title refers basically to reopening ideas, rather than to the expansion of newcomers into the area. The collection is divided into three sections.

The first section, titled *Place*, emphasizes changes in the western environment through history in specific places. Mike Davis's essay, one of three, explores the changes wrought on the West by the development of Las Vegas. As one example, air conditioning, he writes, actually makes the city's evenings 5 to 10 degrees hotter than the surrounding desert.

Part two, labeled *Pasts*, explores the history of the region and its relationship to today's problems in the region. One example: though modern business and commerce has given employment to the Navajo, this has come at the cost of their historical identity and culture. Most enjoyable was Marguerite S. Shaffer's essay, "Negotiating National Identity," in which she traces the history of Western tourism and the

"See America First" movement.

In the final section, *Understanding*, the three essays attempt to "take the choices, decisions, and practices of the past and make them coherent in our complicated present." The collection points out that today's West has many environmental problems, and unfortunately, there are no easy answers.

Though, according to the introduction, the collection's focus is on the Southwest, it ranges elsewhere in the West. Despite the focus, Los Angeles is mentioned far more than any other place in the book. Most mentions are negative; something that tires this native Angelino. Robert Gottlieb, in his closing essay, suggests that those who voted for California's Proposition 187 were mean-spirited, a comment that can be open to argument.

The paperback edition has a most attractive cover photo of the new and the old Navajo Bridges near Lee's Ferry, which depicts the spectacular scenery of the Southwest, a scenery worth preserving. Donald Worster's essay's closing paragraph, found in the second section of the collection, sums up the book: "We are still exploring the American West, its physical contours and its hidden secrets. We are still inventing the region. We have not yet discovered all the institutions we will ever need to live successfully in this place...Learn where you are. Learn the limits of the earth. Learn to do more for yourself than depend always on the nation-state or the corporate capital. Learn to work together if you want to endure."

Willis Osborne



DARK SIDE OF FORTUNE: *Triumph and Scandal in the Life of Oil Tycoon Edward L. Doheny*, by Margaret Leslie Davis. Berkeley: University of California Press, 1998. 340 pp. Illustrations, Maps, Notes, Bibliography, Index. Cloth, \$35. Order from University of California Press, 2120 Berkeley Way, Berkeley, CA 94720, (510) 642-4701.

Students in high school and college American history classes have all been briefly introduced to Edward L. Doheny. As

one of the players in the Teapot Dome scandal, Doheny was accused of offering a bribe to Secretary of the Interior Albert B. Fall—who was convicted of accepting the bribe Doheny was acquitted of giving! Students of California history may recall the personal tragedy of the Doheny family when Edward's son Ned was murdered. And anyone totally uninvolved with history may well be acquainted with Doheny Drive in Beverly Hills. Public monuments to the Doheny name are the library at the University of Southern California, Greystone Mansion, and the Edward L. Doheny Memorial Library at St. John's Seminary in Camarillo.

Such is the exterior side of the Doheny name. Margaret Leslie Davis explores the "dark side" in a fully detailed and engrossing biography of the oil millionaire. With access to major archival collections, interviews with family members and friends, and a critical eye towards published materials, Davis has written a cautionary tale of the price of wealth and power. Usually fame rounds out the triangle, but Doheny shied away from the glare of publicity, not that he could avoid it.

Born in Wisconsin, in 1873 Doheny arrived in New Mexico Territory, ambitious and determined to succeed in life. Success did not come easily. One mining effort after another met with relative failure or fell short of the big strike.

The big strike finally came in Los Angeles in 1892 when Doheny and his partner, Charles Canfield, struck oil. Doheny found himself at the right time and the right place, for with the 20th century came an ever-growing demand for oil. Doheny expanded his operations into Mexico. Trodding carefully through the turmoil of

the Mexican Revolution, by the 1920s he was a multimillionaire.

Albert Fall was an old friend from New Mexico days. When Fall ran into financial difficulties, Doheny offered to help him out with a \$100,000 loan. The trouble was, Doheny and Harry Sinclair were also involved in a move to obtain leases from the Department of the Interior on U.S. Navy oil reserves at Teapot Dome, Wyoming, and Elk Hills, California. Davis carefully traces the intricacies of everyone's motives and actions. If Doheny didn't actually offer a bribe, he certainly exercised poor judgment, making his son, Ned, an errand boy in the episode. When acquittal finally came in 1926, he still had other trials and lawsuits to settle, and Sinclair and Fall's conspiracy trial lasted to 1928.

Less than a year later, on February 16, 1929, Ned Doheny was brutally murdered. Inconsistency in the family testimony and police reports have left an air of mystery hovering over the tragedy, but by then Doheny was 73 years old and in poor health. The death of his only son rendered his court victories and economic power meaningless. He died, a broken man, in 1935.

Davis notes that the Doheny name is not ranked with Rockefeller, Astor, Huntington and other powerful contemporaries, but she argues convincingly that Doheny's "foresight and drive, his great belief in oil as the fuel for progress and industrial development, and his willingness to risk his personal fortune to find and market oil played a crucial part in the economic growth of the nation in the twentieth century." It was the dark side of his fortune that such a notable effort would be tarnished with political scandal and personal tragedy.

Abraham Hoffman